

## **Elliott Bay/Duwamish Restoration Program 2000 Annual Report**

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Individuals and organizations needing further information about the Elliott Bay/Duwamish Restoration Program should contact the Administrative Director at the following address and telephone number:

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The Panel of Managers holds regularly scheduled meetings that are open to the public. Technical Working Group and committee meetings are scheduled on an as-needed basis, and are also open to the public. Meetings are generally held at the National Oceanic and Atmospheric Administration, National Marine Fisheries Service - Regional Directorate Conference Room, Building #1, 7600 Sand Point Way NE, Seattle. The Panel recommends that you contact the Administrative Director at the above phone number to confirm meeting schedules and locations. The Panel also holds periodic special evening and weekend public information meetings and workshops.

#### General Schedule for Panel and Committee Meeting Dates

Panel: quarterly - first Thursday of January, April, July, October from 9:30 A.M. - 12:30 P.M.  
Habitat Development Technical Working Group: scheduled as needed.  
Sediment Remediation Technical Working Group: scheduled as needed.  
Public Participation Committee: scheduled as needed.  
Budget Committee: scheduled as needed.

#### Environmental Review of Specific Projects

Formal hearings and comment periods on appropriate environmental documents for proposed sediment remediation and habitat development projects will be observed. Please contact the Administrative Director for more information.

<p>This information is available in accessible formats on request at (206) 296-0600 (voice) and 1-800-833-6388 (TTY/TDD users only).</p>
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## Introduction

On March 19, 1990, the United States filed a complaint for the National Oceanic and Atmospheric Administration (NOAA) acting on behalf of the public as a trustee for natural resources. The complaint was filed under Section 107 of CERCLA, 42 U.S.C. § 9607 (a), to assess and recover damages for alleged injuries to United States' trust resources in Elliott Bay and the Duwamish River. The other natural resource trustees who were parties to the Consent Decree were: the U.S. Fish and Wildlife Service (USFWS), Washington State Department of Ecology (Ecology), The Suquamish Tribe, and the Muckleshoot Indian Tribe. The defendants named in the lawsuit were the Municipality of Metropolitan Seattle (King County) and the City of Seattle (City).

The lawsuit was settled by consent decree on December 23, 1991. The settlement stipulates that King County and the City will provide a combination of cash payments, real estate, and in-kind services with a total value up to \$24 million. Within the \$24-million budget, \$12 million is set aside for sediment remediation projects, \$5 million for habitat development projects, up to \$5 million for acquisition of real estate for habitat development, and up to \$2 million for source control measures in addition to those planned and implemented by the City and County. The Consent Decree and a detailed summary of the settlement appears in the *Elliott Bay/Duwamish Restoration Program 1992 Annual Report*, available from the Administrative Director.

From its inception through the present, the Panel of Managers (Panel) has selected sites for sediment remediation and habitat development activities and engaged in source control activities following substantial public review and comment. The Program's goals, organization, site selection process, public comments, and responses are presented in the Elliott Bay/Duwamish Restoration Program *Concept Document* (Panel Publication 7), published in June, 1994. Descriptions of sediment remediation and habitat development sites are provided in the *Concept Document* and addenda issued in 1996 and 1997.

This annual report summarizes implementation of the settlement during the ninth year of the Elliott Bay/Duwamish Restoration Program (Program). The report is divided into five

major parts. The Introduction provides a discussion of program organization and the geographic area covered by the settlement. An Executive Summary highlighting 2000 activities in all program areas is presented in the second section. The third section, 2000 Program Chronology, provides highlights taken from minutes of Panel and technical working group meetings. In the fourth section, working group and committee reports describe specific project activities and program developments. The final section provides text of resolutions passed by the Panel during 2000, as well as a report on cash disbursements from the Court Registry account. Appendix A, which includes an organizational chart and listing of Panel participants, is provided for readers who are interested in the Panel organization plan. Appendix B lists the Panel publications issued to date.

#### **Elliott Bay/Duwamish Restoration Program Organization**

The Panel was established by the Consent Decree to manage the implementation of the settlement reached between the natural resource trustees and King County and the City of Seattle. The Panel consists of designated voting representatives and alternates from all parties to the Consent Decree. In 1992, the Panel established a Sediment Remediation Technical Working Group (SRTWG), and a Habitat Development Technical Working Group (HDTWG) to advise the Panel. Also established were the Public Participation Committee and the Budget Committee.

NOAA, through its National Marine Fisheries Service - Restoration Center Northwest, General Counsel Natural Resources, and Damage Assessment Center representatives has been delegated by the Panel the duties and responsibilities of "Administrative Director" (Director). The Director manages and maintains the Administrative Record, is responsible for logistics and planning of Panel and Technical Working Group meetings, and for the dissemination of Panel documents and information requests. The Director is also responsible for tracking Panel resolutions and court registry account activity.

The Panel, Habitat Development and Sediment Remediation Technical Working Groups, Public Participation Committee, Budget Committee, and the Administrative Director comprise the managerial, technical, outreach, and administrative components of the Elliott Bay/Duwamish Restoration Program.

The Panel, through the independent actions of individual representatives, works cooperatively and monitors the process of others initiating restoration projects and other developments or policies affecting the Elliott Bay/Duwamish River ecosystem. The Panel has sponsored public meetings and outreach presentations.

### **Geographic Boundaries**

The area encompassed by the settlement includes Elliott Bay eastward of a line between Alki Point and West Point including the shoreline ten meters upland from the mean high water line within Elliott Bay, and the Duwamish River from the river mouth to the head of navigation (see Figure 1). For purposes of habitat development, the covered area includes tributaries to the Duwamish River.

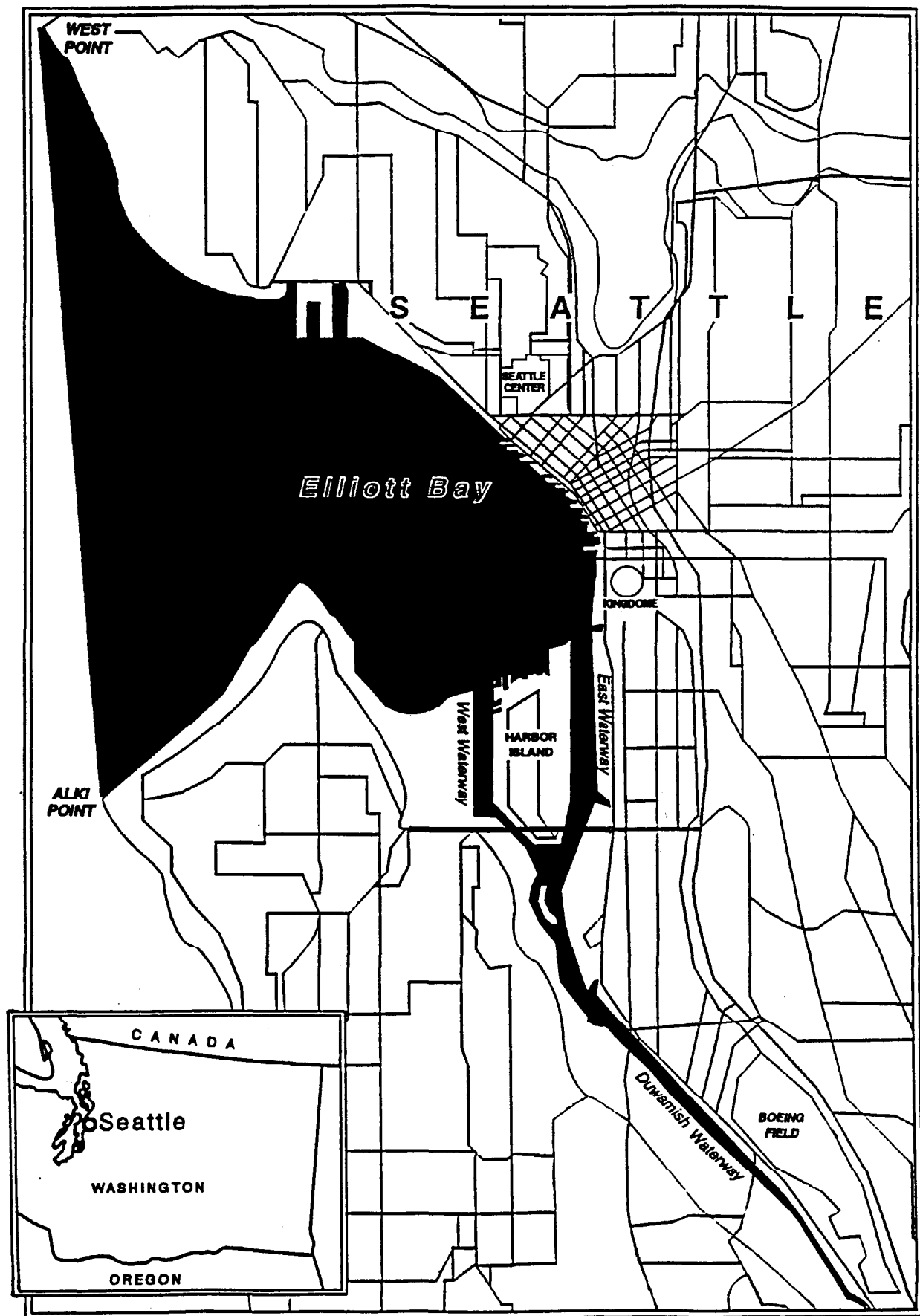


Figure 1.  Area Covered by Settlement

## **Executive Summary**

### **2000 Activities**

Activities in calendar year 2000 focused on supporting the implementation of planned sediment remediation and habitat development projects. Figure 2 provides the location of Panel projects in the area encompassed by the settlement, with the exception of the Porter Levee habitat acquisition site located at Green River mile 34.5 in King County.

#### **Habitat Development**

During 2000, the Habitat Development Technical Working Group, chaired by Curtis Tanner of the U.S. Fish and Wildlife Service (USFWS), continued to guide the Panel concerning habitat projects and acquisition of real property for the purpose of habitat restoration.

Monitoring efforts at the completed Elliott Bay Nearshore Substrate Enhancement Project indicate that the shell, gravel, cobble, and spall subtidal plots are continuing to provide habitat to a variety of marine organisms. Restoration project construction at the former Seaboard Lumber site continued with connection to the Duwamish Waterway accomplished in the Fall. Construction of the Hamm Creek project was completed in July. Environmental permitting for enhanced intertidal wetland areas at the former Kenco Marine site continued, as well as planning efforts for the construction of an intertidal basin for the North Wind's Weir project.

#### **Sediment Remediation**

During 2000, members of the Sediment Remediation Technical Working Group chaired by Pat Romberg, King County Department of Natural Resources, continued efforts supporting the proposed Duwamish/Diagonal sediment remediation project. Monitoring efforts continue at the Norfolk sediment remediation project site which was completed in 1999.

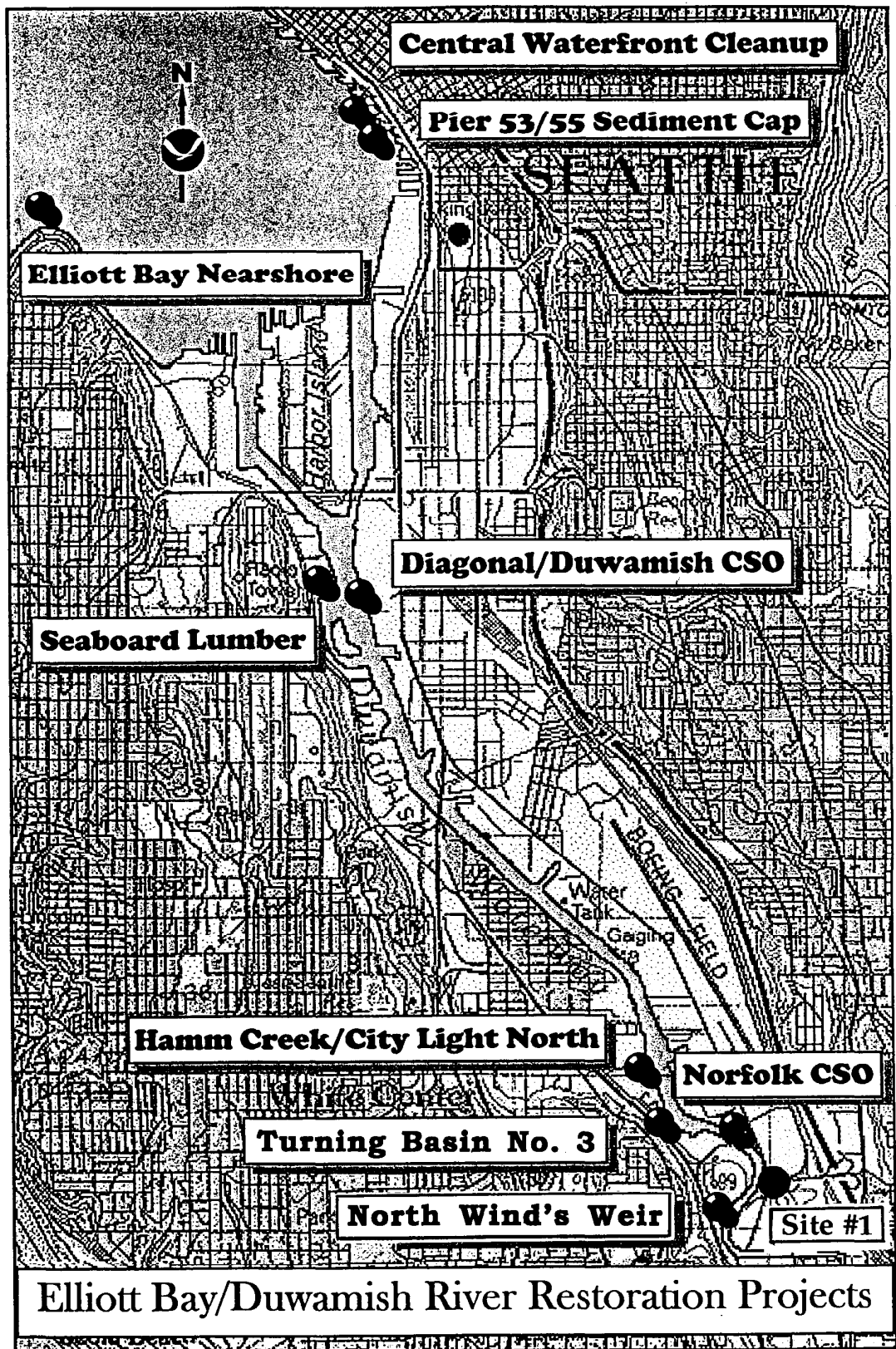


Figure 2.

### **Source Control**

Source Control activities are discussed by the Panel pursuant to recommendations made by the City of Seattle and King County Department of Natural Resources in concert with members of the Sediment Remediation Technical Working Group. During 2000 the City of Seattle and King County continued their respective source control programs in the program area. At the close of 2000, the amount authorized against the up-to \$2.0 million obligation for source control activities totalled \$248,595.

### **Budget Committee**

The Budget Committee, chaired by Margaret Duncan of the Suquamish Tribe, was established to assist the Panel and technical working group members in budget development and review of habitat and sediment remediation project scopes, schedules and budgets. The committee also tracks credits to the City of Seattle and King County for real property acquisitions and source control activities. King County received real estate acquisition credit in the amount of \$1,643,191 and in-kind service credit of \$1,769,751 for certain sediment remediation and habitat development projects during 2000. The committee's analysis of constraints posed by the limitations on planning and design monies in 1996 led to the Panel's successful pursuit of an amendment to the Consent Decree combining allocations for Planning and Design and Panel Function Support into one fund. Continued cost documentation and accounting reconciliation efforts have resulted in updated budget worksheets necessary to implement a planned allocation of the interest earned to date in the Court Registry Account between the Sediment Remediation and Habitat Development programs in January 2001. A total of \$870,619.44 was disbursed from the Court Registry Account during 2000 for project implementation and panel function support.

### **Public Participation Committee**

The Public Participation Committee, chaired by Margaret Duncan of the Suquamish Tribe, advises the Panel on opportunities for public involvement and education in all Program activities. The committee implements the *Public Participation Plan* (1994), assists with the Administrative Record, annual report, mailing list, and general community outreach activities. Six Panel publications were prepared and distributed in 2000, and presentations at professional meetings and workshops were delivered concerning the

Elliott Bay/Duwamish Restoration Program sediment remediation and habitat development activities. Committee members hosted a display featuring Panel activities at the City's Longfellow Creek Celebration as part of "Creek Week 2000" and at the Westlake Transit Tunnel during "Washington Waterweeks 2000."

## **2000 Program Chronology**

### **January**

- Panel meeting held on January 6th, Sediment Remediation and Habitat Development Technical Working Groups met on January 20th.
- Continued construction of the Seaboard Lumber and Hamm Creek habitat restoration projects.
- Identified post-construction sampling sites for monitoring at the Norfolk Combined Sewer Overflow (CSO) sediment remediation site.
- Panel Managers discussed an expanded clean up at the proposed Duwamish/Diagonal CSO site.
- USFWS continued development of an intertidal habitat monitoring plan.
- The Administrative Director submitted a letter to King County supporting the acquisition of Site #1 for habitat development purposes.
- FishPro completed the Environmental Assessment for the Turning Basin #3 habitat restoration project.
- People for Puget Sound presented their Volunteer Salmon Habitat Restoration Monitoring Program to the Panel.

### **February**

- Conducted post-construction sampling at the Norfolk CSO sediment remediation site.
- King County provided additional historical ownership and site-use information at the Duwamish/Diagonal CSO site.
- USFWS prepared a draft outline for the Intertidal Habitat Projects Monitoring Program.

### **March**

- The Budget Committee and the Habitat Development and Sediment Remediation Technical Working Groups met on March 16th.
- King County completed a draft Monitoring Plan for the Elliott Bay Nearshore habitat enhancement project.
- The City of Seattle provided a status report of the Central Waterfront Cleanup Project and proposed reducing the project to an area associated with Piers 56/57.
- King County provided preliminary dredging cost estimates for an expanded Du/Di project.
- The Budget Committee updated project work sheets. The Consent Decree amendment provided approximately \$791K for planning and design. Discussed a preliminary allocation of interest earned in the Court Registry account.
- Released Panel Publication 23, *Intertidal Habitat Projects Monitoring Program*.

## April

- Panel meeting held on April 6th, Sediment Remediation Technical Working Group held on April 20th.
- Public Participation Committee staffed an information booth at the Longfellow Creek Celebration as part of the City of Seattle's "Creek Week 2000."
- Vegetative planting of the Hamm Creek project began on April 12th.
- King County awarded \$500K from the Salmon Recovery Funding Board for the purpose of acquiring the Site #1 Duwamish property.
- King County released a draft report titled "Evaluation of Source Control Potential in the Norfolk CSO Drainage Basin."
- The City of Seattle and King County placed an oil boom in front of the Du/Di CSO due to oiling of tribal fishing nets.
- Approved Resolutions 2000-01 through 2000-04.
- EPA and DOE representatives met with SRTWG members to discuss actions in the lower Duwamish River and to learn about EB/DRP sediment remediation activities.
- Released Panel Publication 24, *1999 Annual Report*.
- Released Panel Publication 27, *Norfolk CSO Sediment Remediation Project Five-Year Monitoring Program: Six-month Post-construction Monitoring Report*.

## May

- The Habitat Development Technical Working Group met on May 18th.
- King County presented a detailed funding strategy for Site #1 acquisition.
- Received revised estimates for the construction of the North Wind's Weir project independent of the adjacent King County park.
- Permitting discussions with the City of Tukwila and Seattle Public Utilities for the North Wind's Weir project raised issues relating to the relocation of water mains and utility lines.
- Released Panel Publication 25, *Elliott Bay Nearshore Substrate Enhancement Monitoring Plan*.

## June

- The Habitat Development Technical Working Group met on June 15th.
- Released a final draft of King County's Biological Assessment for Listed and Proposed Threatened and Endangered Species - Cecil Moses Memorial Park (North Wind's Weir project) for review and comment.
- Completed NEPA documentation for the Turning Basin #3 habitat restoration project.
- King County Parks Department shared stewardship information as part of HDTWG efforts to develop a Stewardship Plan.

## **July**

- Panel meeting held on July 6th.
- Distributed a revised "Draft Duwamish/Diagonal Site Assessment Report" for review and comments.
- The Army Corps of Engineers completed realignment of the channel at Hamm Creek. Completed the intertidal habitat and connection to the Duwamish River.
- USFWS submitted a letter of intent to the Panel to conduct the Intertidal Habitat Monitoring Program.
- Approved Resolutions 2000-05 through 2000-08.
- The Public Participation Committee conducted tours of Elliott Bay and the lower Duwamish River, July 17-21, aboard the R/V Karluk.

## **August**

- Habitat Development and Sediment Remediation Technical Working Groups met on August 17th.
- Held a Special Panel meeting August 17th following the Sediment Remediation meeting to discuss the Duwamish/Diagonal CSO Alternatives Evaluation report and site designation.
- Approved Resolution 2000-09 funding the Intertidal Habitat Monitoring Program at a Special Panel Meeting on August 31st via conference call.
- Installed an irrigation system at the Hamm Creek site.

## **September**

- The Sediment Remediation Technical Working Group met on September 27th.
- The Department of Ecology recommended the Du/Di CSO site be characterized by combining the King County and EPA data sets.
- Released the Biological Assessment for Listed and Proposed Threatened and Endangered Species - Cecil Moses Memorial Park (North Wind's Weir project).
- The Public Participation Committee staffed an information display at the Westlake Transit Tunnel on September 21st as part of "Washington WaterWeeks 2000".

## **October**

- Held Panel and Habitat Development Technical Working Group meetings on October 5th.
- Completed ESA consultations for the Turning Basin #3 project.
- The City of Seattle continued to check storm drains in the Duwamish industrial corridor as part of ongoing source control efforts.
- People for Puget Sound and Cascadia Quest personnel planted the Hamm Creek site. The Corps of Engineers reported that the Hamm Creek project is complete.

- Installed an irrigation system at the Seaboard Lumber site.
- Released Panel Publication 28, *Norfolk CSO Sediment Remediation Project Five-Year Monitoring Program: Annual Monitoring Report - Year One*.
- The Project Manager for the North Wind's Weir project reported that permitting issues will delay construction for one year.

### **November**

- The Habitat Development Technical Working Group met on November 30th.
- Project Managers completed stewardship sheets for each of the habitat restoration projects.
- King County made an offer for a conservation easement at the Site #1 property.
- USFWS Western Regional Office geared up to implement the Intertidal Habitat Projects Monitoring Program.
- Observed salmon spawning at the Hamm Creek site.

### **December**

- The Habitat Development Technical Working Group met on December 14th.
- The Public Participation Committee reported on project signage discussions.
- Seattle Parks Department began the Seaboard Lumber site-naming process.
- Discused options for construction of the North Wind's Weir project.
- Released Panel Publication 26, *Elliott Bay Nearshore Substrate Enhancement Project Monitoring Report: evaluation of the utilization of substrate diversity and the production of prey taxa important to juvenile salmonids in 1998 and 1999*.

## **Public Participation Committee 2000 Summary**

Chair: Margaret Duncan, The Suquamish Tribe  
Telephone: (360) 394-5254

The Public Participation Committee was established by the Panel in accordance with the settlement agreement to assist in the development and implementation of the Panel's Public Participation Plan. The Plan, published in June 1994, provides for public comment, education and involvement in all aspects of the Panel's activities, including project selection and planning, implementation and where appropriate, long-term stewardship. The following objectives were adopted:

- Inform the public about the Panel's Program and its goals, plans and activities;
- Encourage public comment about proposed goals, plans and activities as they are being developed; and
- Involve the public in the Program to the extent possible.

The Public Participation Plan focuses on five areas: meetings; public outreach and education; encouraging environmental review and comment on specific projects; program evaluation; and an administrative record.

### **2000 Activities**

#### **Administrative Record and Annual Report**

The 1999 Annual Report was prepared and distributed through the joint efforts of representatives of NOAA and the Suquamish Tribe. Throughout the year, committee members continued to work with NOAA concerning the maintenance of the Administrative Record.

The committee also continued discussions with the Habitat Development Technical Working Group members about the development of interpretive signage and displays concerning habitat functions and values for restoration projects undertaken in the Lower Duwamish.

Public Participation Committee members attended a tour of Elliott Bay and the Duwamish River aboard the R/V Mary K hosted by Adopt-A-Beach (Puget Sound Chapter) on April 8, 2000.

Outreach and education efforts included hosting tours of Elliott Bay and the lower Duwamish River aboard the R/V Karluk July 17-21, 2000. Committee members provided background information on the Panel's sediment remediation and habitat restoration projects along the Lower Duwamish River.

### Presentations

Representatives of Panel members presented aspects of the Panel's projects at professional meetings and workshops as reported below:

Clancy, T.J. 2000. "Spearheading Restoration in Elliott Bay and the Duwamish River" The Coastal Society , 17th International Conference, July 9-12, 2000 at Portland, Oregon.

### Publications

During the year, six Panel publications were prepared and distributed:

Publication No 23: *Elliott Bay/Duwamish Restoration Program - Intertidal Habitat Projects Monitoring Program.*

Publication No. 24: *Elliott Bay/Duwamish Restoration Program - 1999 Annual Report.*

Publication No. 25: *Elliott Bay Nearshore Substrate Enhancement Monitoring Plan.*

Publication No. 26: *Elliott Bay Nearshore Substrate Enhancement Project Monitoring Report: evaluation of the utilization of substrate diversity and the production of prey taxa important to juvenile salmonids in 1998 and 1999.*

Publication No. 27: *Norfolk CSO Sediment Remediation Project Five-Year Monitoring Program - Six-month Post-Construction Monitoring Report, October 1999.*

Publication No. 28: *Norfolk CSO Sediment Remediation Project Five-Year Monitoring Program - Annual Monitoring Report - Year One, April 2000.*

Please refer to Appendix B for a full listing of Panel publications.

## **Budget Committee 2000 Summary**

Chair: Margaret Duncan, The Suquamish Tribe  
Telephone: (360) 394-5254

The Budget Committee was established by the Panel to assist with annual budget development and status reporting, and the exploration of alternatives and solutions to the limitations posed by the \$3 million planning and design budget (Consent Decree, ¶10[b]). The Committee was also tasked with the development and review of project scopes, schedules and budgets, and summary worksheets for source control and real estate acquisition credits to King County and the City of Seattle in fulfillment of Consent Decree obligations.

### **2000 Activities**

#### **Consent Decree Amendment**

At the close of 1997, Panel members agreed unanimously to seek specific amendments to the Consent Decree which would allow the Panel to supplement planning and design funds (capped at \$3 million) with unspent Panel function support funds (capped at \$2 million) and interest earned on monies deposited in the Court Registry account.

During 1998, the Panel developed a management plan and project-specific scopes, schedules, and budgets in conjunction with the technical working groups and budget committee. In January 1999, following discussions, deliberations, and resolution of in-kind-service credits and cash payments due under the terms of the Consent Decree, the Panel requested that counsel to the parties to the Consent Decree request that the Department of Justice proceed with the Consent Decree amendment process (Resolutions 1999-03).

On October 8, 1999 a proposed amendment to the consent decree was lodged with the United States District Court for the Western District of Washington. Notice was given in the Federal Register.

In January 2000, following a 30-day public comment period, the Department of Justice approved amendments to the consent decree as amended.

#### **Allocation of Earned Interest**

The Consent Decree specifies that interest earned on monies paid into the registry account for habitat development must be spent on habitat project implementation, and that interest earned on monies paid into the registry account for sediment remediation must be used for sediment

remediation project implementation (Consent Decree, ¶4[c]). Separate accounts are not maintained for the programs; accordingly, the Panel requested the Budget Committee to provide a recommendation concerning the allocation of interest earned between the two programs.

In January 1999, the Panel adopted the Committee's interest allocation recommendation (70.6% to the sediment program and 29.4% to the habitat program) to be applied to the total amount of interest earned and in the court registry account on December 31, 2000 (estimated at \$2.5 million). The amount calculated for habitat would thereafter be reserved for habitat projects only, and the amount calculated for sediment remediation would be used for sediment remediation projects only.

The method for insuring the availability of the separate allocations, whether by separate account or by tracking by NOAA, would occur in accordance with the advice of the Administrative Director and assigned NOAA staff. It was further agreed that all interest accrued after December 31, 2000 would be allocated and used for sediment remediation projects.

#### Reconciliation of accounting for King County and the City of Seattle; Project Implementation

Under the terms of the consent decree, King County (then Metro) and the City of Seattle each agreed to pay \$6 million dollars in funds and services for the remediation of sediments, and \$2.5 million dollars in funds and services to be applied to the costs of habitat development (Consent Decree, ¶19 and ¶27). Amounts to be paid into the court registry account for years 1992 through 1996 were identified, and in 1997, balances of the required total contribution were due. Required amounts were duly paid into the account, and in January 1999, the Panel confirmed cost documentation and in-kind service credits for the period 1992 through 1997.

During calendar year 2000, King County submitted additional documentation. The Panel confirmed the cost documentation and granted in-kind service credits for certain sediment remediation and habitat development projects (Resolution 2000-01), and credit for real estate acquisitions (Resolution 2000-05).

No reimbursement documentation was received from the City of Seattle during calendar year 2000.

Current reconciliation of accounting for King County and the City of Seattle to date concerning in-kind services, credits, source control, real property, and cash payments is as follows:

Panel Function Support	\$ 63,073.00
Planning and Design	\$1,500,915.17
Habitat and Sediment Remediation project implementation	\$2,125,345.00

#### Source Control: In-kind service credits

As part of the settlement agreement, King County (then Metro) and the City of Seattle each agreed to make available in-kind services with a value of up to \$1 million to engage in any activities needed to preserve natural resources and prevent recontamination of sites selected for sediment remediation or habitat development in the Panel's covered area (Consent Decree, ¶34). No in-kind service credits were granted during calendar year 2000. To date the Panel has approved requests for source control in-kind service credits totaling \$103,236.51.

#### Credit for the Acquisition of Real Property Interests

Under the terms of the settlement agreement, King County (then Metro) and the City of Seattle each agreed to make real property with a value of up to \$2.5 million permanently available for habitat projects selected by the Panel. Panel members anticipated receiving a formal request for full credit, including appropriate documentation, in 2000. The City anticipated submitting a full request for its \$2.5 million contribution with the purchase of the Seaboard Lumber site for habitat development.

King County submitted a credit request of \$1,643,191.77 towards its \$2.5 million contribution with the purchase of real property interest in sites along the Lower Duwamish River and the Green River (see Habitat Development Technical Working Group Summary). The Panel approved the request via Resolution 2000-05.

Although the City anticipated submitting a full request for its \$2.5 million contribution with the purchase of the Seaboard Lumber site for habitat development, no request was submitted to the Panel.

#### Program Budget Summary Worksheets

Throughout the year, the committee continued the process of ensuring that budget summary worksheets for each program element were updated. Readers are referred to the Habitat Development section for the real estate acquisition budget summary and to the Source Control section for the source control budget summary.

#### Cash Disbursements from the Court Registry Account

During 2000, the Panel approved Resolutions 2000-02 and 2000-03 totaling \$86,784.82 for Panel Function support costs associated with Trustee personnel participating in Panel activities; salary and expenses for an Administrative Director; and costs associated with administering the Court Registry Account.

Resolution 2000-04 authorized the Muckleshoot Indian Tribe's reimbursement request of \$62,617.62 for certain Turning Basin #3 project planning and design expenses for the period January 1, 1998 through April 30, 2000.

Resolution 2000-09 authorized the transfer of monitoring program funds in the amount of \$721,271.00 from the Registry of the Court to the U.S. Department of the Interior - Natural Resource Damage and Restoration Fund for the U.S. Fish and Wildlife Service - Western Washington Office to implement the EB/DRP Intertidal Habitat Projects Monitoring Program.